90-177

Supreme Court, U.S.
FILED
JUL 27 1990
JOSEPH F. SPANIOL, JR.
CLERK

CASE #89-2755

# Supreme Court of the United States

OCTOBER 1990 TERM

"IN PURSUIT OF JUSTICE"

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BETTY P. DOUTHWAITE

vs.

STATE OF VIRGINIA

---

PETITION

FOR A

WRIT OF CERTIORARI

---

CONSTITUTIONAL

LAW

---

"IN GOD I TRUST"

pro se - Layman

*Betty P. Douthwaite*

2405 Childs Lane
Alexandria, Virginia 22308
(703) 780-0272

## CONSTITUTIONAL QUESTIONS

(1) Imperative, "Major point of law" which has not been, but should be settled by this court:

Article VI Section 2 Supremacy Clause plus; Section 3 Oath that binds the Constitution

vs.

The Eleventh Ammendment
Assumption of implied powers,
State Sovereign Immunity

---

(2) And also, violations by the State of these federal rights.

IV Amendment: "to be secure in one's person, and one's home from seizures, intrusions by government'

XIV Amendment: "Equal protection under the Law"

The Federal questions are substantial.

#89-2755

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PARTIES:

BETTY P. DOUTHWAITE : PRO SE - LAYMAN
PLAINTIFF : 2405 Childs Lane
APPELLANT : Alexandria, VA
PETITIONER : 22308
: (703) 780-0272

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STATE OF VIRGINIA

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DEFENDANT'S ATTORNEY:
Asst. Attorney General
Martha M. Parrish
101 North eighth St.
Richmond, VA 23219

ARTICLE VI 27
ELEVENTH Amendment 28

## Jurisdiction

Jurisdiction of this Court is invoked pursuant to Title 28 U.S.C. §1331. The United States Constitutional provisions involved:

Article VI, Section 2: Supremacy Clause

Section 3: The OATH that binds officials to support the Constitution.

IV Amendment: "to be secure in one's person, and one's home from seizures, intrusions by government"

XIV Amendment: "Equal protection under the Law"

The Federal questions are substantial. Whereas, the court order to DISMISS has put an imperative FOCUS ON ARTICLE VI, Section 2 and 3 vs. the Eleventh Amendment, assumption of implied powers, State Sovereign Immunity. Section 2 is explicitly clear, in part: "Anything IN THE CONSTITUTION or laws of any state to the CONTRARY NOTWITHSTANDING."

Statement [at this point and time]

Due to the abrupt, disoriented, United States District Court for the Eastern District of Virginia's ORDER TO DISMISS citing the Eleventh Amendment (42 U.S.C. §1983), a grave situation exists that concerns not only this case, but all of We the People and our Judicial system, our Constitutional form of government and our substantive rights and violations of the Supreme Law. Whereby, a court overrides a foundation of our system of Constitutional government, Article VI, Section 2, Supremacy Clause and Section 3 Oath that binds officials to support the Constitution, and, instead asserts the Eleventh Amendment assumption of implied powers, State Sovereign Immunity which conflicts and it is explicitly stated in Article VI, Section 2, anything IN THE

CONSTITUTION or Laws, of any State to the CONTRARY NOTWITHSTANDING. The ratification of the Constitution in 1789 established Supremacy and the Declaration of Independence rejected sovereignty (monarchistic government).

The appellant seeks to have the Court abrogate this Eleventh Amendment "assumption of implied power" and State Sovereign Immunity Doctrine, and thereby, the precedents that uphold same, as it is detrimental to our form of government - and contrary to our democracy, and thereby endangers all of our freedoms, our common good and our welfare. Further, this tactic provides a shield for violating the Supreme Law of the Land; therefore, for all who treasure freedom, it is imperative that this antiquated, autocratic assumption of

sovereign immunity be voided so that our constitution can remain a "living" document - vital to the Supreme Law of this Land and to We the People.

The appellant shall and did request an opinion on this vital point of law, Constitutional Question, to the Most Honorable, Supreme Court Justice William J. Brennan, Jr.:

Article VI Section 2 Supremacy Clause plus
Section 3 Oath that binds officials to support the Constitution

vs.

The Eleventh Amendment
Assumption of implied powers
State Sovereign Immunity

A justiciable need exists for this opinion. It is an elementary fact that violations of the Supreme Law are prohibited, and that, NO ONE IS ABOVE THE LAW, at any level, in any branch. We the People have witnessed a U.S. Attorney

General go to jail and a President resign under a cloud of doubt. No immunity exists when the Supreme Law of the Land is violated at any level, regardless of the title.

The United States government allows states to conduct their business without interference, ONLY so long as they do not violate the federal laws. Whereas, with this subterfuge, a state hiding under this shield of sovereign immunity is not, thereby, brought to justice. This court order, in fact, abridged substantive rights, and a jury demand (7th Amendment), and let off the VIOLATORS of the Supreme Law, plus, it over-rode Article VI, and ignored U.S. Statute, Federal Tort Claims Act (1964) (tortious actions and damages) in the process.

The Eleventh Amendment only slightly changes Article III, by the two exceptions it points out, of which the appellant is NOT a citizen of another state, nor a citizen or subject of a foreign state. The Eleventh Amendment does NOT have the words, "ARISING UNDER THE CONSTITUTION," but Article III does have these words, "still in force." Also, Article III Section 1 states concerning controversies, in part: "between citizens of different states, between citizens of the same state claiming lands under grants of different states, AND 'BETWEEN' A STATE, OR THE CITIZENS THEREOF." ("between" is the key word.)

We the People are first and foremost citizens of the United States, who reside in various states. Those states ARE NOT

50 principalities with absolute authority as sovereign denotes, but the 50 states are subordinate to the federal government (Article VI, Section 3). The Eleventh Amendment cannot override Article VI and it has not been amended by Congress.

Governments are operated by "real" people, who could not take the OATH (Article VI, Section 2) and swear to support the Constitution if these individuals were not "real". Then the oath and the Constitution (which are the Supreme LAW) would thereby be a pretended law, a mockery; but, said officials have a responsibility under the law. Whereas, the court order asserts the Governor of Virginia is NOT a person within the meaning of 42 U.S.C. §1983 (yet, that U.S. Code cannot be in conflict with our

Constitution or it is, thereby, UN-Constitutional).

In 1821, in the Landmark case, Cohen vs. Virginia, the famous Chief Justice John Marshall boldly met the threat of claims of state sovereignty. He upheld the United States as the supreme government of the whole American people. Chief Justice Marshall made clear that the Supremacy clause meant (1) states may not interfere in any manner with the functioning of the Federal Government, and (2) Federal actions (whether in the form of a statute, a treaty, a court decision, or an administrative act, if itself constitutional, MUST PREVAIL over state actions inconsistent therewith. Schwartz Constitutional Law 48 (2d ed 1979) a state cannot impair federally created constitutional rights "OR

CONDITION" their ENFORCEMENT. The claim of Immunity vs. Enforcement of a federal right, raises a claim of Federal Law 415 U.S. 917, 94 S.Ct. 1413, 39 LE 2d 471 (1974) Willis. The use of sovereign immunity to prevent a federal case is an encroachment and a deprivation of federal justice.

> The antiquated doctrine of state sovereign immunity is a monarchistic, outmoded notion, Smith vs. State 289 NC 303, 222 SE 2d 412 (1976), Evans vs. Board of Commissioners, 174 Co. 97, 482 P 2d 968 (1971). This Despotic mantle, 16 Washburn L.J. 12 (1976), 446 U.S. 993, 100 Supreme Ct. 2979, 64 LE 2d 850 (1980). Shepard's Critique quote: "It is incredible in this modern age - AND in a republic - medieval absolution which is so contrary to our form of government - and that for which it stands, the principles of justice and freedom. Some courts have

> characterized immunity as suspect, an anachronism which works injustice on everyone concerned."

See Brown vs. Wichita State University, 272 Ks 279, 540 P 2d 66 (1975) Holytz vs. Milwaukee, 17 W. 2d 26, 115 N.W. 2d 618 (1962). Sacrificing the injured citizen to benefit the state treasury Sambs vs. City of Brookfield, 97 W. 2d 356, 293 N.W. 2d 504 (1980). States have no legal authority over federal courts nor authority to put CONDITIONS on our Supreme Law.

The State's counsel admitted in her answer to the complaint that the plaintiff had properly plead the jurisdictional grounds pursuant to Title 28 U.S.C. §1331, then, went on to cite the 11th Amendment subterfuge. Under the Federal rules of appellate procedure pursuant to Title 28 U.S.C. 2072, "Such

rules shall NOT ABRIDGE, enlarge or modify any Substantive Right and shall Preserve the right of trial by Jury as at common law and as declared by the Seventh Amendment to the Constitution."

To repeat, the plaintiff's complaint had Jury Demand and all substantive rights were swept out with the Court's abrupt Order to Dismiss, which abused the process and rendered the court's own scheduling order defunct. The scheduling order had set the pretrial conference date August 17, 1989, at 2:55 p.m., and set the completion of discovery by August 11, 1989. The plaintiff (Douthwaite) had complied with the order and had NOTICED Plaintiff's MOTION FOR DEPOSITIONS filed June 19, 1989, and the plaintiff set up a schedule for subpoenas and discovery. The day prior to motions day of June 23,

1989 (the date of court order to dismiss), the plaintiff spoke to the Court's high-ranking Carolyn Currin about a motion asking Supreme Court Justice William J. Brennan for an opinion on the point of law in question. The very next day, the case was dismissed abruptly. The court order denied the plaintiff's Leave on Motion to bring in a Third Party Defendant. The Judge asked who the Defendant would be and the appellant replied that former Governor Charles Robb (presently Senator Robb) was in office at the time of the violations, but under a federal rule, the present Governor could be substituted, as the present Governor Gerald L. Baliles was the Attorney General under former Governor Robb's administration. Therefore, each are equally responsible, as the Governor is

charged to see that the laws are faithfully EXECUTED - and the Attorney General is to carry out this responsibility for the Chief Executive of the State.

## Conclusion

Under a state's claim of sovereign immunity, the states are, thereby, ABOVE the federal judicial process, as it subverts the United States Constitution, obstructs justice, negates due process, and equal protection under the law. Therefore, reducing federal constitutional law questions to "their will" not the Supreme Law.

This Sovereign Immunity Doctrine endangers our form of government and our substantive rights, and endangers the common good and welfare of all of We the People. It puts all our freedoms "in

peril," and is an insurrectionistic tool used "from within" the system. Absolutely NO State is immune, nor any official at any level, from the Supreme Law.

(1) In pursuit of justice, the petitioner respectfully requests this court to untangle this web spun by two lower courts, and to uphold the Constitutional questions presented - and thereby, to stop the damage to our Constitution by such subterfuge, as the Eleventh Amendment was cited in both orders. Abrogation of state's Sovereign Immunity DOCTRINE is sought as well.

(2) The appellant filed strong objections to the Appeals Court's UNPUBLISHED ORDER of May 1, 1990, which asserted the case was without MERIT, which is FALSE. Is the U.S. Constitution

without MERIT? Whereas, this case was FOUNDED "IN" the United States Constitution, on RECORDED FACTS which OCCURRED and were WITNESSED. The Appeals Court's ORDER (MANDATE) shows the disdain the three-panel court has for our Constitution, it distorts the truth, and is prejudiced, appalling and ignoble. Another distortion; the order asserted the appellant could "refile" her claim, which is FALSE; the Statute of Limitations expired after the Complaint was filed May 1989. Both courts know this fact.

The Appeals Court left the appellant without relief. The appellant requested the Appeals Court to publish their order, as under our "open" society, the courts are public domain, as is this information (also, under the Freedom of Information

Act). To reiterate, this case DID NOT have a TRIAL in the U.S. District Court on MERITS but an abrupt dismissal. Plaintiff two motions were heard and denied by the Court (please see Order). One was to bring in a third party, the other was to suppress the Motion to dismiss.

(3) To reiterate, what reasonable individual can deny the Supremacy of our Federal Government with our three supreme branches of power, therein, and the Federal Supreme Law of the Land, the U.S. Constitution and U.S. Statutes. Whereas, Congress has NEVER AMENDED Article VI, nor can a state, nor our courts "AMEND" the U.S. Constitution. Article VI is in force, and it is explicit SEC. 2; anything "IN" THE CONSTITUTION "or LAWS", "of any state" to the CONTRARY,

NOTWITHSTANDING. The use of the ELEVENTH amendment OVER our fundamental Supreme Law rights (in the Constitution) and to deny them is repugnant and NOTWITHSTANDING. The jurisdiction grounds invoked by the petitioner was properly plead, citing: TITLE 28 U.S.C. §1331. Even, the defendant's counsel stated this in her answer to the Complaint (Motion to dismiss). Under Title 28 U.S.C. §2072, no rule (procedural) can abridge, modify or enlarge any substantive right, yet the defendant's counsel used a rule in her Motion to Dismiss. This case and the substantive rights therein were DISMISSED.

THE ELEVENTH AMENDMENT CANNOT BE USED to DENY Article VI and the Fourth and Fourteenth Amendments. All citizens are

to have equal protection under the laws; authoritarian subterfuge is NOT LAW.

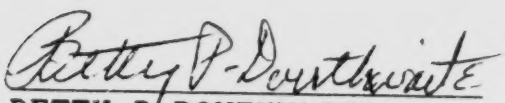
(4) The appellant cited the U.S. Statute Federal Tort Claims Act of 1964 in the complaint for damages ($500,000.00 actual and punitive), and leaves it to the court's discretion.

It is neither just nor prudent for an American citizen to have to get permission from the State, in order, to sue the State on substantial Federal Constitutional violations. This, too, conflicts with due process of law and the whole idea of jurisprudence.

This outmoded Doctrine which is contrary to Article VI is NOTWITHSTANDING, and the decision on this question is needed if our Constitution is to remain a living document for ourselves and our posterity.

Respectfully Submitted,

"IN GOD I TRUST"



BETTY P. DOUTHWAITE

PRO SE - LAYMAN

*Betty P. Douthwaite*

2405 Childs Lane
Alexandria, Virginia 22308
(703) 780-0272

CERTIFICATION AND PROOF OF SERVICE

I hereby certify that a true copy of this Petition for a Writ of Certiorari to the Supreme Court of the United States was sent by registered mail, on this date July 27, 1990, to the State of Virginia's counsel, Asst. Attorney General Martha M. Parrish, Richmond, VA, prior to filing this petition.

Respectfully Submitted,
"IN GOD I TRUST"

Betty P. Douthwaite

BETTY P. DOUTHWAITE
2405 Childs Lane
Alexandria, VA

PRO SE - LAYMAN

## BRIEF STATEMENT

In May of 1982, the State of Virginia negated the plaintiff's most fundamental constitutional rights, in arbitrary and oppressive actions, with reckless disregard for the principles of justice and liberty. The plaintiff, an upright, law-abiding, non-dangerous, concerned and informed citizen and taxpayer, was treated worse than a common criminal or political dissident in a lawless, police state or dictatorship. The plaintiff was seized from her home, hand-cuffed and hauled off by the police, on flimsy, absurd allegations, and railroaded by a biased, kangaroo-mock-setup into a Virginia Institute. She was forced, coerced against her will to take harmful, damaging drugs, unfit for human consumption. These oppressive actions have stigmatized, demeaned and defamed the plaintiff and left her with a loathsome and infamous, undeserved record.

A brief statement of the case, taken from the Complaint, which was hand-written (due to the time factor).

Betty P. Smallwood

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 89-2755

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BETTY P. DOUTHWAITE,

Plaintiff-Appellant,

versus

STATE OF VIRGINIA,

Defendant-Appellee.

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Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Albert V. Bryan, Jr., Chief District Judge. (C/A No. 89-658-A)

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Submitted: December 27, 1989

Decided: May 1,1990

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Before WIDENER, HALL, and MURNAGHAN, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Betty P. Douthwaite, Appellant Pro Se.

Martha Murphey Parrish, Assistant Attorney General, Richmond, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

PER CURIAM:

Betty P. Douthwaite appeals from the district court's order denying relief under 42 U.S.C. § 1983. Our review of the record and the district court's opinion discloses that this appeal is without merit. Accordingly, we affirm on the reasoning of the district court.* Douthwaite v. State of Virginia, C/A No. 89-658-A (E.D. Va. June 23, 1989). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

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* Because a dismissal on Eleventh Amendment grounds is a dismissal for lack of jurisdiction, the district court's order should be construed as a dismissal without prejudice, Fed. R. Civ. P. 41(b), which does not prevent Ms. Douthwaite from refiling her claim against the proper parties.

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

| | | |
|---|---|---|
| BETTY P. DOUTHWAITE, Plaintiff, | ) | CIVIL ACTION |
| V. | ) | NO. 89-658-A |
| STATE OF VIRGINIA, Defendant. | ) | |

O R D E R

The court concluding that this action against the defendant State of Virginia, and the proposed additional defendant (represented by the plaintiff to be the Governor of the State of Virginia ), is barred by the Eleventh Amendment, and that neither the defendant nor the Governor of Virginia is a person within the meaning of 42 U.S.C. § 1983, it is hereby ORDERED that:

1. The motion of the plaintiff to suppress is denied.

2. The motion of the plaintiff to bring in a third-party defendant is denied.

3. The motion of the defendant to dismiss is granted, and this action is dismissed.

United States District Judge

Alexandria, Virginia
June 23rd, 1989

## ARTICLE VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

## AMENDMENT XI.

### Judicial powers construed.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state.